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Filing date: **08/13/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91213057
Party	Plaintiff Hybrid Athletics, LLC
Correspondence Address	WESLEY W WHITMYER JR ST ONGE STEWARD JOHNSTON & REENS LLC 986 BEDFORD STREET STAMFORD, CT 06905 5619 UNITED STATES gmartino@ssjr.com, litigation@ssjr.com
Submission	Motion for Sanctions
Filer's Name	Wesley W. Whitmyer, Jr.
Filer's e-mail	litigation@ssjr.com, mkosma@ssjr.com
Signature	/Wesley W. Whitmyer, Jr./
Date	08/13/2014
Attachments	M. Motion for Sanctions and Entry of Judgment.pdf(747793 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<b>HYBRID ATHLETICS, LLC,</b>	:	
	:	
<b>Opposer,</b>	:	<b>Opposition No. 91213057</b>
	:	
<b>v.</b>	:	
	:	
<b>HYLETE LLC,</b>	:	
	:	
<b>Applicant.</b>	:	

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**OPPOSER’S MOTION FOR SANCTIONS AND  
ENTRY OF JUDGMENT AND MEMORANDUM OF LAW**

Pursuant to Trademark Rule 2.120(g), Opposer Hybrid Athletics, LLC (“Hybrid”) respectfully moves the Trademark Trial and Appeal Board (“Board”) for an order sustaining the opposition against Applicant Hylete LLC (“Hylete”) and refusing registration of Trademark Application Serial No. 85/837,045 due to Hylete’s failure to respond to an Order of the Board compelling discovery.

**FACTS**

1. On March 4, 2014, Hybrid served Opposer Hybrid Athletics’ First Set of Interrogatories to Applicant Nos. 1 – 21 and Opposer Hybrid Athletics’ First Set of Requests for the Production of Documents and Things to Applicant Nos. 1 – 26 on Hylete. (Attached as Exhibits A and B.)

2. On April 3, 2014, Hylete served objections and responses to Hybrid’s discovery requests. (Attached as Exhibits C and D.)

3. Despite the fact that the Board’s Standard Protective Order is in place and Parties cannot withhold properly discoverable information on the basis of confidentiality, Hylete

improperly objected to numerous of Hybrid's discovery requests. TBMP 412.01; *see also*, *Amazon Technologies, Inc. v. Wax*, 93 USPQ2d 1702, 1706 n.6 (TTAB 2009).

4. Specifically, Hylete improperly objected to numerous requests as "seek[ing] information that is confidential, privacy protected, and/or trade secrets" and improperly limited the documents produced to "non-confidential, non-trade secret responsive documents." (Exhibits C and D; Doc. No. 8 at 2-3.)

5. Hybrid made multiple good faith efforts to resolve this discovery dispute without assistance by the Board. (Doc. No. 8 at 3-5.)

6. Due to Hylete's refusal to provide proper discovery, on May 21, 2014 Hybrid filed Opposer's Motion to Compel and Memorandum of Law. (Doc. No. 8.)

7. On July 4, 2014, the Board issued an Order granting Hybrid's Motion to Compel. (Doc. No. 10, Attached as Exhibit E.) Pursuant to the Board's Order, Hylete was given thirty (30) days from July 4, 2014 to serve on Hybrid complete responses to Hybrid's documents requests and interrogatories without objection. (Exhibit E.)

8. Hylete failed to serve upon Hybrid any responses to Hybrid's discovery requests by the Board-imposed August 4, 2014 deadline, and has yet to serve upon Hybrid any responses, in clear violation of the July 4, 2014 Order.

9. As set forth in the Board's Order, "should [Hylete] fail to provide the ordered responses and initial disclosures, then [Hybrid's] remedy will lie in a motion for sanctions in the form of entry of judgment sustaining the oppositions and refusing registration." (Exhibit E at 2)(citing Trademark Rule 2.120(g).)

## **ARGUMENT**

10. Where a party fails to comply with a Board Order compelling discovery, entry of default judgment is an appropriate remedy. *See Benedict v. Superbakery Inc.*, 665 F.3d 1263, 101 USPQ2d 1089, 1093 (Fed. Cir. 2011) (entry of judgment warranted in view of repeated failures to comply with reasonable orders of the Board and no lesser sanction would be effective), *aff'g* 96 USPQ2d 1134 (TTAB 2010); *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Manufacturing Co.*, 55 USPQ2d 1848, 1854 (TTAB 2000); *Caterpillar Tractor Co. v. Catfish Anglers Together, Inc.*, 194 USPQ 99, 100 (TTAB 1976) (judgment entered where applicant provided no reason for not complying with Board order compelling discovery).

11. Hylete has failed to comply with the Board's Order compelling discovery. Hybrid, therefore, respectfully moves the Board for an order sustaining the opposition against Hylete and refusing registration of Trademark Application Serial No. 85/837,045.

## **CONCLUSION**

WHEREFORE, Opposer Hybrid moves the Board to issue an order:

1. Sustaining the Opposition;
2. Refusing registration of Trademark Application Serial No. 85/837,045; and
3. Granting such other relief as is appropriate.

HYBRID ATHLETICS, LLC

August 13, 2014

/s/ Wesley W. Whitmyer, Jr.

Wesley W. Whitmyer, Jr.

Andy I. Corea

Michael J. Kosma

St. Onge. Steward Johnston & Reens LLC

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*ATTORNEYS FOR OPPOSER*

**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the foregoing OPPOSER'S MOTION FOR  
SANCTIONS AND MEMORANDUM OF LAW was served by first class mail, postage prepaid  
on the Correspondent for the Applicant as follows:

Kyriacos Tsircou  
Tsircou Law, P.C.  
515 S. Flower Street, Floor 36  
Los Angeles, CA 90071-2221

8/13/14 \_\_\_\_\_  
Date

*/s/ Jessica L. White* \_\_\_\_\_  
Jessica L. White

# Exhibit A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<b>HYBRID ATHLETICS LLC,</b>	:	
	:	
<b>Opposer,</b>	:	<b>Opposition No. 91213057</b>
	:	
<b>v.</b>	:	
	:	
<b>HYLETE LLC,</b>	:	
	:	
<b>Applicant.</b>	:	

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**OPPOSER HYBRID ATHLETICS' FIRST  
SET OF INTERROGATORIES TO APPLICANT**

Opposer, Hybrid Athletics LLC (hereinafter referred to as “Hybrid” or “Opposer”), pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, hereby request that Applicant Hylete LLC (hereinafter referred to as “Hylete” or “Applicant”) respond to the following interrogatories fully, separately, in writing and under oath by an officer thereof. These interrogatories shall be deemed to be continuing to the extent that if the answers to these interrogatories would be changed by information acquired by Applicant subsequent to the service of such answers, Applicant shall promptly thereafter serve supplemental answers reflecting such changes.

In the following interrogatories:

(A) “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Interrogatories any information which might otherwise be construed to be outside of their scope.

(B) “Applicant” or “Hylete” refers to Hylete LLC and each of its predecessors, successors, subsidiaries and affiliates.




(C) “Communication” shall mean or refer to all documents, inquiries, discussions, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, facsimiles, notes, telegrams, advertisements, or other forms of verbal exchange, whether oral or written.


(D) “Concerning” means relating to, referring to, describing, evidencing or constituting.

(E) “Date” means the day, month, and year.

(F) “Document” means all matter that is written, typed, printed, reproduced, or recorded (including graphic, aural, mechanical or electronic records), referring or relating, directly or indirectly, in whole or in part, to the matter that is the subject of the particular discovery request or interrogatory, including, but not limited to, originals and copies of letters, notes, notebooks, minutes, memoranda of telephone calls, correspondence, drafts, messages, telegrams, periodicals, brochures, leaflets, bonds, files, records, reports, working papers, routing slips, diaries, calendars, appointment books, log books, time sheets, budgets, estimates, studies, checks, statements, receipts, returns, books, interoffice and intraoffice communications, notations of any sort of conversations, bulletins, computer printouts, e-mail, teletypes, telefaxes, photographs, charts, graphs, microfiche, video tapes, motion pictures, tapes, cassettes, disks, recordings, computer-stored data, worksheets, contracts, agreements, bids, offers, proposals, quotations, tables, compilations, tabulations, tallies, diagrams, drawings, maps, illustrations or statistical analysis, by whomever prepared now or formerly in Applicant’s actual or constructive possession, custody or control. If a document has been prepared in several copies, or if additional copies are made that are not identical, or are no longer identical by reason of subsequent notation or other modification of any kind whatsoever, including but not limited to,

notations on the backs of pages thereto, each non-identical copy is a separate document and must be produced.

(G) “Hylete Mark” means the trademark “” alone as well as in combination with other terms or symbols, whether used in a trademark or service mark sense, or used as a trade name, company name, or in any other way.

(H) “Hybrid Mark” means the trademark “” alone as well as in combination with other terms or symbols, whether used in a trademark or service mark sense, or used as a trade name, company name, or in any other way.

(I) “Opposer” or “Hybrid” refers to Hybrid Athletics LLC.

(J) "Oral communication" means any utterance heard by any person, whether heard in person, by telephone or in any other manner.

(K) The word "person" or "persons" shall mean an individual, corporation, proprietorship, partnership, association or any other entity.

(L) Where identification of a person is required, such identification shall, without limitation, include:

- a. the person's full name;
- b. whether it is an individual, corporation, proprietorship, association or other entity;
- c. business address; and
- d. if an individual, his home address or if not known, his last known address, and his present employer and position.

(M) Where identification or description of an act or event is required, such identification or description shall, without limitation, include:

- a. date or dates of occurrence;
- b. place or places of occurrence;
- c. identification of each person present and the name of the organization each represented or was connected with; and
- d. what was said and/or done by each such person.

(N) Where identification of a document is required, such identification should be sufficient for the characterization of the document in a request for production of documents under Rule 34 of the Federal Rules of Civil Procedure and shall, without limitation, include:

- a. the identity of the author;
- b. the date of the document;
- c. the general nature of the document, i.e. whether it is a letter, memorandum, pamphlet, report, advertising matter, advertising proofs, etc.;
- d. the identity of all recipients of copies of the document;
- e. the identity of the person now having possession of the original document and the location of the original;
- f. the identity of each person now having possession of a copy of the document and the location of each such copy; and
- g. for each document which defendant contends is privileged or otherwise excludable from discovery, the basis for such claim of privilege or other grounds of exclusion;

(O) Where identification of an oral communication is required, such identification shall, without limitation, include:

- a. the identity of the person or persons making the oral communication;
- b. the identity of any persons hearing such oral communication;
- c. the date of such oral communication; and
- d. what was said by all persons participating in said oral communication.

(P) If privilege against provision of information or production of a document is claimed, identify the specific basis therefore, provide a complete specification and description of every fact upon which the claim of privilege is based, and state for each piece of information or document:

- a. its date;
- b. its author(s);
- c. its addressees and/or distributes;
- d. its general type (*e.g.*, letter, memo, report, invoice, etc.) and the general type of its subject matter;
- e. its present location (including title, index number and location of the actual file in which it is stored);
- f. the identity of the present custodian of the document or other person responsible for its filing; and
- g. the identity of person(s) who can authenticate or identify the document.

(Q) The use of the singular form of any word includes the plural and vice versa.

(R) "You" or "Your" means Applicant and each of its predecessors, successors, subsidiaries and affiliates.

## **INTERROGATORIES**

### **INTERROGATORY NO. 1:**

Identify all persons who participated in any way in the preparation of the responses to Hybrid's interrogatories and state specifically, with reference to interrogatory numbers, the area of participation of each such person.

### **INTERROGATORY NO. 2:**

With respect to the April 9, 2012 first date of use alleged by Applicant in its U.S. Trademark Serial No. 85837045 for the Hylete Mark, identify all documents upon which Applicant relies to establish that date.

### **INTERROGATORY NO. 3:**

State and describe any known incidents wherein a person was confused, mistaken, or deceived as to the source of products sold by Hylete or any business conducted by Hylete under the Hylete Mark, believing that Opposer's business and Hylete's business were related in some way, and identify all documents related to each incident or purported incident.

### **INTERROGATORY NO. 4:**

State whether you have received any inquiries or communications as to whether products sold by Hylete are associated with, sponsored by, or in any manner connected with Hybrid and/or the Hybrid Mark, or whether you are aware of any other incidents of actual confusion, mistake or deception arising from the use of the Hylete Mark. Identify and describe all relevant facts and circumstances surrounding each incident and identify all documents relating thereto.

**INTERROGATORY NO. 5:**

State the facts and circumstances under which you first became aware of Opposer's use of the Hybrid Mark, including the date on which it first became aware of Opposer's use of the Hybrid Mark, and identify each document relating to such facts and circumstances.

**INTERROGATORY NO. 6:**

State whether, after Hylete became aware of Opposer's use of the Hybrid Mark, anyone affiliated with Hylete questioned the propriety of Hylete's use of the Hylete mark, and identify the parties involved in such matters, each document that evidences such matters, and any person who has knowledge about such matters.

**INTERROGATORY NO. 7:**

Identify and fully describe the channels of trade and/or the potential channels of trade, including all distributors, agents, or retail outlets, through which Hylete's goods and/or services bearing the Hylete Mark are currently sold, offered, or distributed and/or intended to be sold, offered, or distributed.

**INTERROGATORY NO. 8:**

Fully describe the facts surrounding the selection of the Hylete Mark.

**INTERROGATORY NO. 9:**

Identify all products and/or services sold or intended to be sold by Hylete in the United States in connection with the Hylete Mark and identify all documents related thereto.

**INTERROGATORY NO. 10:**

Describe all methods in which goods bearing the Hylete Mark are, or are intended to be, advertised, promoted, marketed or otherwise brought to the attention of customers and potential customers.

**INTERROGATORY NO. 11:**

With respect to the products and services identified in response to Interrogatory No. 9, provide the date(s) that the Hylete Mark was first used in interstate commerce as defined by the Lanham Act (15 U.S.C.S. §§ 1051 et seq.).

**INTERROGATORY NO. 12:**

With respect to the products and services identified in response to Interrogatory No. 9, provide the geographical scope of such former or current use of the Hylete Mark within the U.S.

**INTERROGATORY NO. 13:**

With respect to the products and services identified in response to Interrogatory No. 9, identify the dates during which you have continuously used the Hylete Mark, or if such use(s) has (have) not been continuous, state with particularity the dates and reason for any period that the Hylete Mark has not been used by you.

**INTERROGATORY NO. 14:**

Describe fully any advertising conducted by any person of the Hylete Mark within the U.S. including, but without limitation, the nature of such advertising, the geographic scope of such advertising, and the amount of money spent for such advertising on a yearly basis.

**INTERROGATORY NO. 15:**

State the names and addresses of each Hylete customer and the inclusive dates each such person has been a customer.

**INTERROGATORY NO. 16:**

Identify all facts and documents which support Hylete's first affirmative defense that the "Notice of Opposition, and each paragraph thereof, taken individually or collectively, fails to state claims upon which relief can be granted."

**INTERROGATORY NO. 17:**

Identify all facts and documents which support Hylete's second affirmative defense that "Opposer has abandoned any and all rights to the alleged mark in this Opposition."

**INTERROGATORY NO. 18:**

Identify all facts and documents which support Hylete's third affirmative defense that "Opposer's alleged mark is not protectable as sought in this Opposition."



**INTERROGATORY NO. 19:**

Identify all facts and documents which support Hylete's fourth affirmative that "Opposer's alleged rights in its mark, if any, are narrow and not subject to wide protection due to dilutive third party use of similar marks for similar goods and services."

**INTERROGATORY NO. 20:**

Identify all facts and documents which support Hylete's fifth affirmative defense that "Opposer does not have standing to oppose registration of Applicant's application."

**INTERROGATORY NO. 21:**

Identify all manufacturers of goods using the Hylete Mark.

Date: March 4, 2014



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Wesley W. Whitmyer, Jr.  
Andy I. Corea  
Michael J. Kosma  
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Email: [litigation@ssjr.com](mailto:litigation@ssjr.com)

Attorneys for Opposer

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing **HYBRID ATHLETICS' FIRST SET OF INTERROGATORIES TO APPLICANT** was served by first class mail, postage prepaid on the Correspondent for the Applicant as follows:

Kyriacos Tsircou  
Tsircou Law, P.C.  
515 S. Flower Street, Floor 36  
Los Angeles, CA 90071-2221

3/4/2014  
Date

Jeh WE  
Jessica L. White

# Exhibit B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<b>HYBRID ATHLETICS LLC,</b>	:	
	:	
<b>Opposer,</b>	:	<b>Opposition No. 91213057</b>
	:	
<b>v.</b>	:	
	:	
<b>Hylete LLC,</b>	:	
	:	
<b>Applicant.</b>	:	

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**OPPOSER HYBRID ATHLETICS' FIRST SET OF REQUESTS FOR THE  
PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT**

Opposer, Hybrid Athletics LLC (hereinafter referred to as “Hybrid” or “Opposer”), pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, hereby serves upon Applicant Hylete LLC (hereinafter referred to as “Hylete” or “Applicant”), the following requests for production of documents to be fulfilled separately and fully by mailing copies of all responsive documents to the office of Opposer's attorneys, St. Onge Steward Johnston & Reens, 986 Bedford Street, Stamford, Connecticut 06905 and by making the originals available for future inspection and possible use at any hearing, or under such other terms as may be mutually agreed to by counsel for the parties. These requests shall be deemed to be continuing to the extent that if additional responsive documents are discovered by Applicant subsequent to the initial production, Applicant shall promptly thereafter produce the newly discovered documents or copies thereof.

In the following Requests:

(A) “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Interrogatories any information which might otherwise be construed to be outside of their scope.

(B) “Applicant” or “Hylete” refers to Hylete LLC and each of its predecessors, successors, subsidiaries and affiliates.

(C) “Communication” shall mean or refer to all documents, inquiries, discussions, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, facsimiles, notes, telegrams, advertisements, or other forms of verbal exchange, whether oral or written.


(D) “Concerning” means relating to, referring to, describing, evidencing or constituting.

(E) “Date” means the day, month, and year.


(F) “Document” means all matter that is written, typed, printed, reproduced, or recorded (including graphic, aural, mechanical or electronic records), referring or relating, directly or indirectly, in whole or in part, to the matter that is the subject of the particular discovery request or interrogatory, including, but not limited to, originals and copies of letters, notes, notebooks, minutes, memoranda of telephone calls, correspondence, drafts, messages, telegrams, periodicals, brochures, leaflets, bonds, files, records, reports, working papers, routing slips, diaries, calendars, appointment books, log books, time sheets, budgets, estimates, studies, checks, statements, receipts, returns, books, interoffice and intraoffice communications, notations of any sort of conversations, bulletins, computer printouts, e-mail, teletypes, telefaxes, photographs, charts, graphs, microfiche, video tapes, motion pictures, tapes, cassettes, disks,

recordings, computer-stored data, worksheets, contracts, agreements, bids, offers, proposals, quotations, tables, compilations, tabulations, tallies, diagrams, drawings, maps, illustrations or statistical analysis, by whomever prepared now or formerly in Applicant's actual or constructive possession, custody or control. If a document has been prepared in several copies, or if additional copies are made that are not identical, or are no longer identical by reason of subsequent notation or other modification of any kind whatsoever, including but not limited to, notations on the backs of pages thereto, each non-identical copy is a separate document and must be produced.



(G) “Hylete Mark” means the trademark “” alone as well as in combination with other terms or symbols, whether used in a trademark or service mark sense, or used as a trade name, company name, or in any other way.



(H) “Hybrid Mark” means the trademark “” alone as well as in combination with other terms or symbols, whether used in a trademark or service mark sense, or used as a trade name, company name, or in any other way.

(I) “Opposer” or “Hybrid” refers to Hybrid Athletics, LLC.

(J) "Oral communication" means any utterance heard by any person, whether heard in person, by telephone or in any other manner.

(K) The word "person" or "persons" shall mean an individual, corporation, proprietorship, partnership, association or any other entity.

(L) If privilege against provision of information or production of a document is claimed, identify the specific basis therefor, provide a complete specification and description of every fact upon which the claim of privilege is based, and state for each piece of information or document:

- a. its date;
- b. its author(s);
- c. its addressees and/or distributes:
- d. its general type (*e.g.*, letter, memo, report, invoice, etc.) and the general type of its subject matter;
- e. its present location (including title, index number and location of the actual file in which it is stored);
- f. the identity of the present custodian of the document or other person responsible for its filing; and
- g. the identity of person(s) who can authenticate or identify the document.

(M) The use of the singular form of any word includes the plural and vice versa.

(N) "You" or "Your" means Applicant and each of its predecessors, successors, subsidiaries and affiliates.

## **Requests for Production**

### **REQUEST NO. 1:**

All documents that refer to or support any allegations made in Hylete's Answer to Notice of Opposition.

### **REQUEST NO. 2:**

All documents used, identified, relied upon or referred to by Hylete when answering Opposer's First Set of Interrogatories or any discovery requests propounded by Opposer.

### **REQUEST NO. 3:**

Documents sufficient to show the date of first use of the Hylete Mark.

### **REQUEST NO. 4:**

Documents sufficient to show Hylete's continuous bona fide use in commerce of the Hylete Mark from the date of first use to the present.

### **REQUEST NO. 5:**

All documents concerning Hylete's past, current, or planned future use of the Hylete Mark within the U.S.

### **REQUEST NO. 6:**

All communications concerning the use, or planned future use, of the Hylete Mark by any third party within the U.S.



**REQUEST NO. 7:**

All documents concerning the use of the Hylete Mark in the U.S. in connection with the sale or advertising of a product and/or service.

**REQUEST NO. 8:**

Documents sufficient to show the target market of products and/or services sold or offered for sale in connection with the Hylete Mark within the U.S.

**REQUEST NO. 9:**

Documents sufficient to show the target market of products and/or services planned to be sold or offered for sale in the future in connection with the Hylete Mark within the U.S.

**REQUEST NO. 10:**

Documents sufficient to identify the geographic location of users of products and/or services offered under the Hylete Mark in the U.S.

**REQUEST NO. 11:**

All marketing plans, forecasts, projections and documents concerning Hylete's marketing and sales plans for products and/or services sold, to be sold, advertised, or to be advertised, bearing or associated with the Hylete Mark.

**REQUEST NO. 12:**

Documents sufficient to identify the channels of trade through which Hylete offers or plans to offer each product and/or service sold, to be sold, advertised, or to be advertised, bearing the Hylete Mark within the U.S.

**REQUEST NO. 13:**

All documents concerning any instances of actual confusion, mistake, deception or association of any kind between the Hybrid Mark and the Hylete Mark, including but not limited to, any consumer surveys.

**REQUEST NO. 14:**

All documents concerning any survey Hylete has conducted or plans to conduct concerning Opposer and its trademark(s) or the Hybrid Mark.

**REQUEST NO. 15:**

All documents exchanged between Hybrid and Hylete.

**REQUEST NO. 16:**

All documents exchanged between and among Hylete, its distributors and sales personnel that relate to Hybrid or the Hybrid Mark.

**REQUEST NO. 17:**

All documents relating to any civil or U.S. Patent and Trademark Office proceedings, or threatened proceeding, in the U.S. between Hylete and third parties, involving use of the Hylete Mark.

**REQUEST NO. 18:**

All documents relating to any written or oral agreements by which Hylete and any third parties settled a dispute in respect of the use of the Hylete Mark.

**REQUEST NO. 19:**

All documents that Hylete will or may offer as exhibits at trial.

**REQUEST NO. 20:**

All documents identified or referred to in Hylete's Initial Disclosures.

**REQUEST NO. 21:**

All documents showing the Hylete Mark used on each item listed in the identification of goods for its U.S. Trademark Serial No. 85837045.

**REQUEST NO. 22:**

All agreements between Hylete and any manufacture for the production of goods bearing the Hylete Mark.

**REQUEST NO. 23:**

Documents sufficient to identify all suppliers, agents and importers of goods bearing the Hylete Mark including, but not limited to, bills of lading, invoices, contracts and purchase orders.

**REQUEST NO. 24:**

Documents sufficient to identify all venues where Hylete has sold, offered for sale or displayed goods bearing the Hylete Mark including, but not limited to, gyms (e.g. CrossFit Affiliates), stores, events and athletic competitions.

**REQUEST NO. 25:**

Documents sufficient to identify each seller, re-seller, retailer, distributor and wholesaler of goods bearing the Hylete Mark.

**REQUEST NO. 26:**

Documents sufficient to identify all customers who have purchased goods bearing the Hylete Mark.

Date: March 4, 2014



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Andy I. Corea  
Michael J. Kosma  
ST. ONGE STEWARD JOHNSTON & REENS, LLC  
986 Bedford Street  
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Email: [litigation@ssjr.com](mailto:litigation@ssjr.com)  
Attorneys for Opposer

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing **HYBRID ATHLETICS' FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT** was served by first class mail, postage prepaid on the Correspondent for the Applicant as follows:

Kyriacos Tsircou  
Tsircou Law, P.C.  
515 S. Flower Street, Floor 36  
Los Angeles, CA 90071-2221

3/4/2014  
Date

  
\_\_\_\_\_  
Jessica L. White

# Exhibit C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HYBRID ATHLETICS, LLC,

Opposer,

v.

HYLETE, LLC,

Applicant.

Opposition No.: 91213057

Application Serial No.: 85/837,045

APPLICANT HYTELE'S  
OBJECTIONS AND RESPONSES  
TO OPPOSER'S FIRST SET OF  
INTERROGATORIES

PROPOUNDING PARTY: Opposer, Hybrid Athletics, LLC

RESPONDING PARTY: Applicant, Hylete LLC

SET NO.: One

Applicant Hylete, LLC (“APPLICANT”) responds to Opposer Hybrid Athletics, LLC (“OPPOSER” or “PROPOUNDING PARTY”) Interrogatories, Set One as follows:

**PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

1. The following Preliminary Statement and General Objections are incorporated into APPLICANT’s responses to each Interrogatory as if APPLICANT separately so objected and/or stated in response to each Interrogatory.

2. Investigation and discovery by APPLICANT is continuing and is not complete. As discovery proceeds, witnesses, documents, facts, and evidence may be discovered that were not presently known, but upon which APPLICANT may rely in support of its contentions in this action. The responses contained herein shall not preclude APPLICANT from introducing evidence based on such new and/or additional information.

3. Facts and evidence now known may be imperfectly understood, or the relevance or consequences of such facts and evidence may be imperfectly understood, and, accordingly, such facts and evidence may, in good faith, not have been analyzed for purposes of the following responses. APPLICANT reserves the right to refer to, conduct discovery with reference to, or offer into evidence at trial any and all such witnesses, facts, and evidence, notwithstanding these responses. APPLICANT expressly reserves the right to rely at any time, including trial, on information omitted from these responses as a result of mistake, error, oversight, inadvertence, or subsequent discovery.

4. APPLICANT objects to these Interrogatories to the extent that they seek information that is not in the possession, custody or control of APPLICANT or is in the custody or control of a person or entity that is not a party to this



litigation, or is in the joint custody and control of APPLICANT and PROPOUNDING PARTY, or is equally or more readily accessible to PROPOUNDING PARTY and its counselor is contained in public records.

5. APPLICANT objects to these Interrogatories and accompanying definitions to the extent they require the production or identification of documents, writings, records or publications in the possession of third parties or in the public domain, because such information is equally available to PROPOUNDING PARTY.

6. APPLICANT objects to these Interrogatories to the extent that they seek information which requires legal interpretation and/or a legal conclusion.

7. APPLICANT objects to these Interrogatories to the extent that they seek privileged information, including, without limitation, information protected by the attorney-client privilege, the attorney work-product doctrine, or any applicable common law, statutory or constitutional privileges. To the extent that these Interrogatories seek such privileged or protected information, APPLICANT will not provide such information. Moreover, even if APPLICANT inadvertently provides information protected from disclosure by the foregoing privileges or protections, APPLICANT does not waive its right to assert those privileges and/or objections to disclosure.

8. Nothing herein should be construed as an admission by APPLICANT with respect to the admissibility or relevance of any fact or document, or as an admission that APPLICANT agrees with the characterization of such fact or document(s) by APPLICANT. Responses to any Interrogatory are subject to all objections as to competence, relevance, materiality, propriety and admissibility, as well as to any and all other objections on any grounds that would require the exclusion of any statement therein if the response were introduced in

court, all of which objections and grounds are expressly reserved and may be interposed at any time of any motion or trial.

9. APPLICANT objects to the INSTRUCTIONS on the grounds they seek to impose obligations on it beyond those provided for by the Code of Civil Procedure.

10. These responses are made without prejudice to APPLICANT's right to produce evidence or contentions, or to add, modify, or to otherwise change or amend the responses herein based upon information hereafter obtained or evaluated, including, but not limited to, information and documents produced by APPLICANT and other witnesses and/or any developments in the law.

**APPLICANT'S OBJECTIONS AND RESPONSES TO  
OPPOSER'S FIRST SET OF INTERROGATORIES**

**INTERROGATORY NO. 1:**

Identify all persons who participated in any way in the preparation of the responses to Hybrid's interrogatories and state specifically, with reference to interrogatory numbers, the area of participation of each such person.

**RESPONSE TO INTERROGATORY NO. 1:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows: Ron Wilson; Matt Paulson; and Jennifer Null.

**INTERROGATORY NO. 2:**

With respect to the April 9, 2012 first date of use alleged by Applicant in its U.S. Trademark Serial No. 85837045 for the Hylete Mark, identify all documents upon which Applicant relies to establish that date.

**RESPONSE TO INTERROGATORY NO. 2:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks expert opinions and/or legal conclusions; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant's date of first use is at least as early as April 9, 2012. A zazzle.com web order placed on April 9, 2012. Pursuant to Fed. R. Civ. P. 33(d), Applicant directs Opposer to documents bearing bates nos. HYLETE 001-0133.

**INTERROGATORY NO. 3:**

State and describe any known incidents wherein a person was confused, mistaken, or deceived as to the source of products sold by Hylete or any business conducted by Hylete under the Hylete Mark, believing that Opposer's business and Hylete's business were related in some way, and identify all documents related to each incident or purported incident.

**RESPONSE TO INTERROGATORY NO. 3:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Prior to Opposer's Objections and Responses to Applicant's First Set of Interrogatories, wherein a Facebook posting was provided, Applicant was unaware of any incidents wherein a person was confused, mistaken, or deceived as to the source of products sold by Hylete or any business conducted by Hylete under the Hylete mark.

**INTERROGATORY NO. 4:**

State whether you have received any inquiries or communications as to whether products sold by Hylete are associated with, sponsored by, or in any manner connected with Hybrid and/or the Hybrid Mark, or whether you are aware of any other incidents of actual confusion, mistake or deception arising from the use of the Hylete Mark. Identify and describe all relevant facts and circumstances surrounding each incident and identify all documents relating thereto.

**RESPONSE TO INTERROGATORY NO. 4:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; protected by the attorney-client privilege and/or work-product doctrine; seeks expert opinions and/or legal conclusions; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Prior to Opposer's Objections and Responses to Applicant's First Set of Interrogatories, wherein a Facebook posting was provided, Applicant was unaware of any incidents wherein a person was confused, mistaken, or deceived as to the source of products sold by Hylete or any business conducted by Hylete under the Hylete mark.

**INTERROGATORY NO. 5:**

State the facts and circumstances under which you first became aware of Opposer's use of the Hybrid Mark, including the date on which it first became aware of Opposer's use of the Hybrid Mark, and identify each document relating to such facts and circumstances.

**RESPONSE TO INTERROGATORY NO. 5:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks expert opinions and/or legal conclusions.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Matt Paulson and Jennifer Null were aware of Opposer's mark in 2011. There is no documentation relating to such facts and circumstances.

**INTERROGATORY NO. 6:**

State whether, after Hylete became aware of Opposer's use of the Hybrid Mark, anyone affiliated with Hylete questioned the propriety of Hylete's use of the Hylete mark, and identify the parties involved in such matters, each document

that evidences such matters, and any person who has knowledge about such matters.

**RESPONSE TO INTERROGATORY NO. 6:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

No one affiliated with Applicant questioned the propriety of Hylete's use of the Hylete mark.

**INTERROGATORY NO. 7:**

Identify and fully describe the channels of trade and/or the potential channels of trade, including all distributors, agents, or retail outlets, through which Hylete's goods and/or services bearing the Hylete Mark are currently sold, offered, or distributed and/or intended to be sold, offered, or distributed.

**RESPONSE TO INTERROGATORY NO. 7:**

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant's items are sold primarily through web sales via website www.hylete.com. In addition, items are also sold through approximately 150 gyms that carry co-branded merchandise.

**INTERROGATORY NO. 8:**

Fully describe the facts surrounding the selection of the Hylete Mark.

**RESPONSE TO INTERROGATORY NO. 8:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Ron Wilson designed the mark on the days of March 17 – March 20, 2012. Given that the Applicant's company name is Hylete, Applicant sought to design the mark to have a shield like appearance and contain a stylized "H".

**INTERROGATORY NO. 9:**

Identify all products and/or services sold or intended to be sold by Hylete in the United States in connection with the Hylete Mark and identify all documents related thereto.

**RESPONSE TO INTERROGATORY NO. 9:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the

discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Hylete products and/or services sold can be seen on Applicant's website [www.hylete.com](http://www.hylete.com). Hylete currently sells or intends to manufacture and sell men's and women's performance apparel including but not limited to: shirts, pants, socks, base layer, compression tops/bottoms, and tights. In addition, Hylete manufactures and sells a convertible backpack, a drawstring bag, and sells or intends to manufacture and sell equipment bags, messenger bags, duffle bags, and toiletry bags.

**INTERROGATORY NO. 10:**

Describe all methods in which goods bearing the Hylete Mark are, or are intended to be, advertised, promoted, marketed or otherwise brought to the attention of customers and potential customers.

**RESPONSE TO INTERROGATORY NO. 10:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:



Applicant advertises, markets, and promotes its products through events and social media.

**INTERROGATORY NO. 11:**

With respect to the products and services identified in response to Interrogatory No. 9, provide the date(s) that the Hylete Mark was first used in interstate commerce as defined by the Lanham Act (15 U.S.C.S. §§ 1051 et seq.).

**RESPONSE TO INTERROGATORY NO. 11:**

APPLICANT objects to this request to the extent it is vague and ambiguous.

Subject to and without waiving the objections above, APPLICANT responds as follows: at least as early as July 7, 2012.

**INTERROGATORY NO. 12:**

With respect to the products and services identified in response to Interrogatory No. 9, provide the geographical scope of such former or current use of the Hylete Mark within the U.S.

**RESPONSE TO INTERROGATORY NO. 12:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant's current use of the Hylete mark extends throughout the entire United States.

**INTERROGATORY NO. 13:**

With respect to the products and services identified in response to Interrogatory No. 9, identify the dates during which you have continuously used the Hylete Mark, or if such use(s) has (have) not been continuous, state with particularity the dates and reason for any period that the Hylete Mark has not been used by you.

**RESPONSE TO INTERROGATORY NO. 13:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant has continuously used the Hylete mark from at least as early as July 7, 2012 to present day.

**INTERROGATORY NO. 14:**

Describe fully any advertising conducted by any person of the Hylete Mark within the U.S. including, but without limitation, the nature of such advertising, the geographic scope of such advertising, and the amount of money spent for such advertising on a yearly basis.

**RESPONSE TO INTERROGATORY NO. 14:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant has conducted advertising and marketing nationwide through events and social media.

**INTERROGATORY NO. 15:**

State the names and addresses of each Hylete customer and the inclusive dates each such person has been a customer.

**RESPONSE TO INTERROGATORY NO. 15:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

**INTERROGATORY NO. 16:**

Identify all facts and documents which support Hylete's first affirmative defense that the "Notice of Opposition, and each paragraph thereof, taken individually or collectively, fails to state claims upon which relief can be granted."

**RESPONSE TO INTERROGATORY NO. 16:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT directs Opposer to provided documents.

**INTERROGATORY NO. 17:**

Identify all facts and documents which support Hylete's second affirmative defense that "Opposer has abandoned any and all rights to the alleged mark in this Opposition."

**RESPONSE TO INTERROGATORY NO. 17:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible.

Subject to and without waiving the objections above, APPLICANT directs Opposer to provided documents.

**INTERROGATORY NO. 18:**

Identify all facts and documents which support Hylete's third affirmative defense that "Opposer's alleged mark is not protectable as sought in this Opposition."

**RESPONSE TO INTERROGATORY NO. 18:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 19:**

Identify all facts and documents which support Hylete's fourth affirmative that "Opposer's alleged rights in its mark, if any, are narrow and not subject to wide protection due to dilutive third party use of similar marks for similar goods and services."

**RESPONSE TO INTERROGATORY NO. 19:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Applicant has provided all information it is currently knowledgeable of and in its current possession.

**INTERROGATORY NO. 20:**

Identify all facts and documents which support Hylete's fifth affirmative defense that "Opposer does not have standing to oppose registration of Applicant's application."

**RESPONSE TO INTERROGATORY NO. 20:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT responds as follows:

Subject to and without waiving the objections above, APPLICANT directs Opposer to provided documents.

**INTERROGATORY NO. 21:**

Identify all manufacturers of goods using the Hylete Mark.

**RESPONSE TO INTERROGATORY NO. 21:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

DATE: April 2, 2014

By           /kyri tsircou/            
Kyriacos Tsircou  
Attorney for Applicant HYLETE, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on April 2, 2014, I have sent a copy of APPLICANT HYLETE'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES Pursuant to Fed. R. Civ. P. 26(a)(1) to the foregoing, by electronic mail and U.S. Mail, First Class pre-paid postage, to:

Wesley W. Whitmyer  
St. Onge, Steward Johnston & Reens LLC  
986 Bedford Street  
Stamford, CT 06905  
Tel. (203) 324-6155 Facsimile (203) 327-1096  
Email:litigation@ssjr.com

\_\_\_\_\_/kyri tsircou/\_\_\_\_\_  
\_\_\_\_\_

Kyriacos Tsircou, Esq.

# Exhibit D



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HYBRID ATHLETICS, LLC,

Opposer,

v.

HYLETE, LLC,

Applicant.

Opposition No.: 91213057

Application Serial No.: 85/837,045

APPLICANT HYTELE'S  
OBJECTIONS AND RESPONSES  
TO OPPOSER'S FIRST SET OF  
REQUEST FOR PRODUCTION

PROPOUNDING PARTY: Opposer, Hybrid Athletics, LLC

RESPONDING PARTY: Applicant, Hylete LLC

SET NO.: One

Applicant Hylete, LLC (“APPLICANT”) responds to Opposer Hybrid Athletics, LLC (“OPPOSER” or “PROPOUNDING PARTY”) Request for Production, Set One as follows:

**PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

**GENERAL OBJECTIONS**

1. APPLICANT objects to each request to the extent that it may be construed as calling for information subject to any claim of privilege, including, but not limited to, the attorney/client privilege and/or the attorney work product doctrine, including information prepared in anticipation of litigation, or for trial, by or on behalf of responding party, or its representatives, or relating to mental impressions, conclusions, opinions or legal terms of responding party’s counsel.. Pursuant thereto, APPLICANT and their counsel hereby claim these privileges and object to any such applicable request on this basis.

2. Investigation and discovery by APPLICANT is continuing and is not complete. As discovery proceeds, witnesses, documents, facts, and evidence may be discovered that were not presently known, but upon which APPLICANT may rely in support of its contentions in this action. The responses contained herein shall not preclude APPLICANT from introducing evidence based on such new and/or additional information.

3. APPLICANT objects to each request to the extent that it may be construed as calling for information neither relevant to the subject matter of this action nor likely to lead to the discovery of admissible evidence.

4. APPLICANT objects to each request to the extent that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.

5. APPLICANT objects to each request to the extent that the

discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

6. APPLICANT objects to each request to the extent that it is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation.

7. APPLICANT objects to each request to the extent that it may be construed as calling for information already in OPPOSER's possession, custody, or control on the grounds that such request is unduly burdensome and oppressive, and otherwise exceeds the bounds of permissible discovery.

8. APPLICANT objects to each request to the extent that it seeks documents, the production of which would violate any constitutional, statutory or common law privacy interest of APPLICANT (the "Privacy Objection").

9. APPLICANT objects to the instructed form of production of certain documents such as photographs, videotapes, or other or other image-recording devices and visual media. APPLICANT will provide the responsive, non-privileged documents in CD-Rom, DVD-Rom, or other appropriate electronic media.

10. APPLICANT objects to the demand for production of originals. APPLICANT will provide true and accurate copies of the responsive, non-privileged documents in CD-Rom, DVD-Rom, or other appropriate electronic or fixed media.

11. Each of these general objections are incorporated into each of the responses set forth below, each response is made without waiver of any of these general objections.

**APPLICANT'S OBJECTIONS AND RESPONSES TO  
OPPOSER'S FIRST SET OF REQUEST FOR PRODUCTION**

**REQUEST NO. 1:**

All documents that refer to or support any allegations made in Hylete's Answer to Notice of Opposition.

**RESPONSE TO REQUEST NO. 1:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 2:**

All documents used, identified, relied upon or referred to by Hylete when answering Opposer's First Set of Interrogatories or any discovery requests propounded by Opposer.

**RESPONSE TO REQUEST NO. 2:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 3:**

Documents sufficient to show the date of first use of the Hylete Mark.

**RESPONSE TO REQUEST NO. 3:**

APPLICANT objects to this request to the extent it is: vague and ambiguous; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 4:**

Documents sufficient to show Hylete's continuous bona fide use in commerce of the Hylete Mark from the date of first use to the present.

**RESPONSE TO REQUEST NO. 4:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 5:**

All documents concerning Hylete's past, current, or planned future use of the Hylete Mark within the U.S.

**RESPONSE TO REQUEST NO. 5:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 6:**

All communications concerning the use, or planned future use, of the Hylete Mark by any third party within the U.S.

**RESPONSE TO REQUEST NO. 6:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 7:**

All documents concerning the use of the Hylete Mark in the U.S. in connection with the sale or advertising of a product and/or service.

**RESPONSE TO REQUEST NO. 7:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 8:**

Documents sufficient to show the target market of products and/or services sold or offered for sale in connection with the Hylete Mark within the U.S.

**RESPONSE TO REQUEST NO. 8:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 9:**

Documents sufficient to show the target market of products and/or services planned to be sold or offered for sale in the future in connection with the Hylete Mark within the U.S.

**RESPONSE TO REQUEST NO. 9:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 10:**

Documents sufficient to identify the geographic location of users of products and/or services offered under the Hylete Mark in the U.S.

**RESPONSE TO REQUEST NO. 10:**

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the



discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 11:**

All marketing plans, forecasts, projections and documents concerning Hylete's marketing and sales plans for products and/or services sold, to be sold, advertised, or to be advertised, bearing or associated with the Hylete Mark.

**RESPONSE TO REQUEST NO. 11:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 12:**

Documents sufficient to identify the channels of trade through which Hylete offers or plans to offer each product and/or service sold, to be sold, advertised, or to be advertised, bearing the Hylete Mark within the U.S.

**RESPONSE TO REQUEST NO. 12:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 13:**

All documents concerning any instances of actual confusion, mistake, deception or association of any kind between the Hybrid Mark and the Hylete Mark, including but not limited to, any consumer surveys.

**RESPONSE TO REQUEST NO. 13:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 14:**

All documents concerning any survey Hylete has conducted or plans to conduct concerning Opposer and its trademark(s) or the Hybrid Mark.

**RESPONSE TO REQUEST NO. 14:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 15:**

All documents exchanged between Hybrid and Hylete.

**RESPONSE TO REQUEST NO. 15:**

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 16:**

All documents exchanged between and among Hylete, its distributors and sales personnel that relate to Hybrid or the Hybrid Mark.

**RESPONSE TO REQUEST NO. 16:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 17:**

All documents relating to any civil or U.S. Patent and Trademark Office proceedings, or threatened proceeding, in the U.S. between Hylete and third parties, involving use of the Hylete Mark.

**RESPONSE TO REQUEST NO. 17:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 18:**

All documents relating to any written or oral agreements by which Hylete and any third parties settled a dispute in respect of the use of the Hylete Mark.

**RESPONSE TO REQUEST NO. 18:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 19:**

All documents that Hylete will or may offer as exhibits at trial.

**RESPONSE TO REQUEST NO. 19:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 20:**

All documents identified or referred to in Hylete's Initial Disclosures.

**RESPONSE TO REQUEST NO. 20:**

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 21:**

All documents showing the Hylete Mark used on each item listed in the identification of goods for its U.S. Trademark Serial No. 85/837,045.

**RESPONSE TO REQUEST NO. 21:**

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 22:**

All agreements between Hylete and any manufacture for the production of goods bearing the Hylete Mark.

**RESPONSE TO REQUEST NO. 22:**

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 23:**

Documents sufficient to identify all suppliers, agents and importers of goods bearing the Hylete Mark including, but not limited to, bills of lading, invoices, contracts and purchase orders.

**RESPONSE TO REQUEST NO. 23:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 24:**

Documents sufficient to identify all venues where Hylete has sold, offered for sale or displayed goods bearing the Hylete Mark including, but not limited to, gyms (e.g. CrossFit Affiliates), stores, events and athletic competitions.

**RESPONSE TO REQUEST NO. 24:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 25:**

Documents sufficient to identify each seller, re-seller, retailer, distributor and wholesaler of goods bearing the Hylete Mark.

**RESPONSE TO REQUEST NO. 25:**

APPLICANT objects to this request to the extent it is: vague and ambiguous; seeks information that is not relevant nor likely to lead to the



discovery of admissible evidence; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

**REQUEST NO. 26:**

Documents sufficient to identify all customers who have purchased goods bearing the Hylete Mark.

**RESPONSE TO REQUEST NO. 26:**

APPLICANT objects to this request to the extent it is: vague, ambiguous and unintelligible; seeks information that is not relevant nor likely to lead to the discovery of admissible evidence; protected by the attorney-client privilege and/or work-product doctrine; seeks information that is confidential, privacy protected, and/or trade secrets.

Subject to and without waiving the objections above, APPLICANT will provide any non-privileged, non-confidential, non-trade secret responsive documents to the extent they exist and can be located after a reasonable search.

DATE: APRIL 2, 2014

By \_\_\_\_\_/kyri tsircou/\_\_\_\_\_  
Kyriacos Tsircou  
Attorney for Applicant HYLETE, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on April 2, 2014, I have sent a copy of APPLICANT HYLETE'S OBJECTIONS AND RESPONSES TO OPPOSER'S FIRST SET OF REQUEST FOR PRODUCTION Pursuant to Fed. R. Civ. P. 26(a)(1) to the foregoing, by electronic mail and U.S. Mail, First Class pre-paid postage, to:

Wesley W. Whitmyer  
St. Onge, Steward Johnston & Reens LLC  
986 Bedford Street  
Stamford, CT 06905  
Tel. (203) 324-6155 Facsimile (203) 327-1096  
Email:litigation@ssjr.com

\_\_\_\_\_/kyri tsircou/\_\_\_\_\_  
\_\_\_\_\_

Kyriacos Tsircou, Esq.

# Exhibit E

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

MT

Mailed: July 4, 2014

Opposition No. 91213057

Hybrid Athletics, LLC

v.

Hylete LLC

**Denise M. DelGizzi,**  
**Technical Program Manager:**

Opposer's motion to compel (filed May 21, 2014) is noted. Opposer's motion to compel is hereby granted as conceded. See Trademark Rule 2.120(e) and 2.127(a). Accordingly, applicant has **THIRTY DAYS** from the mailing date of this order to serve on opposer's counsel complete responses to opposer's document requests and interrogatories (served on March 4, 2014). Because applicant failed either to timely respond or to object to opposer's discovery requests, applicant has forfeited its right to object to the discovery requests on their merits. Objections going to the merits of a discovery request include those which, for example, challenge the request as overly broad, unduly vague and ambiguous, burdensome and oppressive, and seeking non-discoverable information on expert witnesses, or as not calculated to lead to the discovery of admissible evidence. *See No Fear*

*Inc. v. Rule*, 54 USPQ2d 1551 (TTAB 2000). Should applicant fail to provide the ordered responses and initial disclosures, then opposer's remedy will lie in a motion for sanctions in the form of entry of judgment sustaining the oppositions and refusing registration. *See* Trademark rule 2.120(g).

Disclosures, discovery, trial and briefing periods are as follows:

In the event that applicant fails to serve full responses as ordered herein, Opposer remedy may lie in a motion for sanctions, as appropriate. *See* Trademark Rule 2.120(g)(1); TBMP § 411.05.

Proceedings are resumed. Discovery, disclosure and trial dates are reset as indicated below:

Initial Disclosures Due	<b>8/4/2014</b>
Expert Disclosures Due	<b>12/2/2014</b>
Discovery Closes	<b>1/1/2015</b>
Plaintiff's Pretrial Disclosures	<b>2/15/2015</b>
Plaintiff's 30-day Trial Period Ends	<b>4/1/2015</b>
Defendant's Pretrial Disclosures	<b>4/16/2015</b>
Defendant's 30-day Trial Period Ends	<b>5/31/2015</b>
Plaintiff's Rebuttal Disclosures	<b>6/15/2015</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>7/15/2015</b>

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.